THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.10722 OF 2005

DATED: 10-04-2006

BETWEEN

Bala Prasad Awasthi,

S/o. Devi Dayal Awasthi,

R/o. Hyderabad.

…PETITIONER

AND

The Commissioner,

Municipal Corporation of Hyderabad,

Office at Tank Bund, Hyderabad and

another.

…RESPONDENTS

ORDER:

Petitioner seeks a Writ of Mandamus to declare the proposed action of the respondents 1 and 2 in laying cement road by encroaching upon his house property bearing municipal No.18-3-407 admeasuring 302 Sq. yards situated at Chawni Ghulam Murtuza, Bhatji Nagar, Hyderabad for road widening without following due process of law as illegal and arbitrary and contrary to Section 146 and 147 of the Hyderabad Municipal Corporations Act, 1955 (for short 'the Act').

Learned counsel for the petitioner submits that petitioner is the absolute owner and possessor of the aforementioned house having purchased the same vide registered sale deed bearing document No.1147 of 1970 and since then he has been enjoying the property without any interference. While so, the respondents have dumped construction of his house on the northern side with a view to lay down cement road in the locality. He further submits that the action of the respondents without following the due procedure prescribed under law and without paying any compensation either by way of private negotiations or by way of initiating proceedings under the Land Acquisition Act is utter violation of principles of natural justice as well as Sections 146 and 147 of the Act.

No doubt widening/laying of the road is in the public interest but while laying the road, if any property of the private individual is coming in the way, it is for the respondents to acquire the same either by way of initiating land acquisition proceedings or by following due process of law.

Having regard to the facts and circumstances of the case,
the respondents are directed not to demolish the structures or take away any portion of the property of the petitioner and not to dispossess him without following due process of law either under Section 146 or 147 of the Act or by private negotiations or by initiating the proceedings under the Land Acquisition Act, 1894. No costs.

The writ petition is accordingly disposed of.

_____

V. ESWARAIAH, J

April 10, 2006

DSK